the proper tax treatment of a transaction the court may have recourse to the evidence of accountants. But the evidence of accountants, in itself, can never be conclusive on a question of law. (See *Heather* v. *P-E Consulting Group Ltd.*,[4] at pages 322 and 323).

To succeed in this appeal the company must prove that the Comptroller's assessment is incorrect. The Comptroller's assessment is based on the company's previous treatment of accumulating the property tax payments. So to establish that the Comptroller's assessment is incorrect the company has to prove that its previous method of accumulating property tax was wrong. The primary issue is, therefore, as correctly stated by the Board, whether the company was wrong in its previous treatment of property tax payments.

The primary issue is a question of law for the Board alone to decide. In determining this question of law the Board has to look at all the facts, and consider the accountancy evidence. Lord Denning in *Heather* v. *P-E Consulting Group Ltd.* said (page 322):

"The courts have always been advised greatly by the evidence of accountants. Their practice should be given due weight; but the courts have never regarded themselves as being bound by it. It would be wrong to do so."

And Lord Buckley in the same case stated (page 323):

"Skilled accountants may well be much better qualified than most judges to formulate and explain such principles; but nevertheless in every case of this kind it is the judge and not the witness who must decide whether a witness's evidence in fact exemplifies sound accountancy principles. A judge may, as Lord Wilberforce did in *Strick* v. *Regent Oil Co. Ltd.* 43 T.C. 1, reject the accountant's evidence, or he may accept it."

Having heard and seen the witnesses the Board was entitled to accept the evidence of one accountant in preference to the evidence of the others. I am unable to say that the Board was wrong in preferring the evidence of Mr. Yip to that of Mr. Coomber and the other witnesses for the company.

In my view the Board was justified in deciding that "considering the evidence before us and the submissions of counsel, we are of the view that the accumulation of property tax payments by the company pending the completion of the projects in respect of which they are paid, is not inconsistent with ordinary principles of commercial accounting where the 'completed contract cost' method of accounting is adopted."

The company contends that the Board erred in law and fact in failing to find that the company had shown good reasons for the change in its treatment of property tax.

The reasons brought forward by the company before the Board did not justify a change in its treatment of property tax and the Board was correct in holding that the company had failed to discharge the onus that its former treatment of property tax was wrong and must be changed.

In the result this appeal fails and is dismissed with costs.

*Appeal dismissed.*

Solicitors: *Lee & Lee.*

## ZAINOON v. MOHAMED ZAIN

**[Appeal Board (Mohamed Abdullah, Chairman, Mohamed Ariff bin Ahmad & Mohamed Harith bin Mohamed Kassim, Members) July 30, 1980]**

**[Singapore — Shariah Court Appeals Nos. 1 & 2 of 1978]**

*Islamic Law — Divorce — Claim for contribution towards setting up of matrimonial home — Harta sapencarian — Claim for muta'ah — Administration of Muslim Law Act (Cap. 42), ss. 35(3) & 42.*

*Malay customary law — Malay custom in Singapore — Adat Temenggong — Harta sapencarian.*

In this case the parties were married in April 1959. In 1969 the respondent bought a house in his own name and for this purpose he took a loan from the Government and from the Syarikat Guru-Guru Melayu. There were differences between the parties and in November 1977 the respondent divorced the appellant by one *talak* and subsequently applied to the Shariah Court to register the divorce. In the course of the proceedings the appellant claimed that she had spent about $11,000 to renovate the house and she claimed her share back. The respondent denied that the appellant made any contribution towards the purchase of the house. The appellant also claimed *muta'ah* or consolatory gift.

The learned President of the Shariah Court found that the divorce was validly pronounced and ordered that it be registered. He also ordered the respondent to refund to the appellant the sum of $3,666.00 being her contribution towards the setting up of the matrimonial home and a sum of $700 as consolatory gift.

The learned President held that the evidence of both parties was unsatisfactory. As there was a dispute as to properties acquired after the marriage, both parties should normally take the oath and the property would then be equally divided between them. In this case however as the fixtures and fittings were bought more than nine years ago and as their value had depreciated, the learned President ordered the respondent to pay one-third of the claim. As regards the claim for the consolatory gift, he found that even if the appellant was at fault in deserting the matrimonial home, it was the husband who pronounced the *talak*. He therefore ordered the respondent to pay $700.00 as consolatory gift.

The appellant appealed against the quantum of the awards and the respondent appealed against the orders for payment.

**Held:** (1) the appellant had not discharged the burden of proof to show that the property was jointly acquired by the spouses or by their joint efforts;

(2) the principle of *harta sapencarian* was not applicable in this case but the appellant was entitled to a refund of the sums she had contributed. The quantum of the appellant's interest should be fixed at one-half of $11,000 that is $5,500;

(3) as it was the appellant who deserted the matrimonial home and she was the party in default, she was not entitled to the *muta'ah* or consolatory gift.

**Obiter dicta:** The Board takes judicial notice that the Malay custom in Singapore is *Adat Temenggong* and that it is much the same as that found in the States of Malaya particularly Johore. The Board therefore is prepared to take judicial notice that the principle of *harta sapencarian* is part of the Malay custom in Singapore.

*Cases referred to:-*

(1) *Roberts* v. *Ummi Kalthom* [1966] 1 M.L.J. 163.

(2) *Mohamed* v. *Commissioner of Lands and Mines, Trengganu & Anor.* [1968] 1 M.L.J. 227.

(3) *Bongah* v. *Mat Din* (1937) 15 JMBRAS 16.

(4) *Tijah* v. *Mat Alli* (1937) 15 JMBRAS 15.

SHARIAH COURT APPEAL.

*J.B. Jeyaretnam* for the appellant.

*Syed Ahmad Helmy Dahlan* for the respondent.

*Cur. Adv. Vult.*

**Mohamed Abdullah, Chairman** (delivering the judgment of the Board): These appeals arise out of the decision of the learned President of the Shariah Court wherein he ordered that Mohamed Zain bin Ismail refund to Zainoon binte Ibrahim the sum of $3,666 being her contribution towards the setting up of their matrimonial home and pay to Zainoon a further sum of $700 as consolatory gift.

Zainoon is dissatisfied with the award of $3,666 and has appealed to us contending that she is entitled to more. At the same time Mohamed Zain, being dissatisfied that he was so ordered (to refund $3,666 to Zainoon and to pay her a further sum of $700), has appealed to us against both orders. We shall hereafter refer to Zainoon as the appellant and Mohamed Zain as the respondent.

The facts of the case are as follows: The parties were married on April 9, 1959. The respondent was (and still is) a school teacher and at the time of the trial was earning a salary of $1,200 a month. The appellant was a sales manager and commission agent for a household product. She began her working career in 1968. At the time of the trial she was earning $1,700 a month.

In 1969 the respondent bought a house at No. 164 Lorong Sarina, Singapore, in his own name. To finance the purchase of the house, he took a loan from the Government of the Republic of Singapore, the amount of which was not stated before the Shariah Court. In addition he obtained two loans totalling $6,000 from the Sharikat Guru-Guru Melayu Singapura for renovating the house.

In 1976 the relationship between the parties unfortunately became strained. In November 1977 the respondent divorced the appellant by one *talak* and subsequently applied to the Shariah Court to register the divorce.

In the course of the proceedings to register the divorce, the appellant claimed that she had spent about $11,000 to renovate the house and she wanted her share back. The respondent denied that the appellant made any contribution towards the purchase of the house. He contended that in 1969 her income was merely $300 a month and that she had kept her earnings to herself.

At the conclusion of the trial the learned President of the Shariah Court found that *talak* was validly pronounced and ordered that the divorce be registered after payment by the respondent to the appellant of the amounts mentioned earlier.

With regard to the claim by the appellant, the court held that the evidence of both parties was unsatisfactory. The court applied the rule of law as enunciated in *Kitab I'anatut Talibeen* at page 265, *Kitab Albajuri* at page 356 and *Kitab Almahzab* at page 318 which state that in the event of a dispute between a husband and wife (on divorce) with regard to properties acquired by them after their marriage (including their matrimonial home) and if neither of them could clearly prove his or her ownership, then both parties are to take oath and the property in dispute is to be divided equally between them. However, as the fixtures and fittings were bought more than nine years ago and their value have since depreciated, the court ordered that the respondent refund to the appellant an amount representing one-third of her claim.

As regards the order for payment of consolatory gift to the appellant, the court held that it was the respondent who had caused the divorce. Even assuming that it was the appellant who was at fault and who deserted the matrimonial home, that would not have caused the divorce between the parties unless the respondent pronounced *talak*. That being the case and taking into consideration the position of the parties, the court ordered the respondent to pay the appellant consolatory gift in the amount of $700.

The appellant contended before the Board that the court had erred in fact and in law in failing to hold that the appellant had contributed the sum of $11,000 towards the purchase of the house and that the appellant had, by relieving the respondent of his obligation to maintain his family, enabled him to pay for the house; that the court had failed to take into account the enhanced value of the property at the time of the division; and that the court had failed to apply the principle of *harta sapencarian* whereby the court ought to have awarded the appellant one-third to one-half of the value of the property at the time of the division.

The learned counsel for the appellant, Mr. J.B. Jeyaretnam, relied on section 35(3) of the Administration of Muslim Law Act which provides that the law applicable to division of property on divorce is that of Muslim law as varied where applicable by Malay custom. He argued that the Malay custom of *harta sapencarian* is applicable in the division of property in this case. In support of his contention he relied on the cases of *Roberts alias Kamarulzaman* v. *Ummi Kalthom*[1] and *Mohamed* v. *Commissioner of Lands and Mines, Trengganu & Anor.*[2]

In the case of *Roberts alias Kamarulzaman* v. *Ummi Kalthom,* the husband claimed a half share of their matrimonial home at Setapak, Kuala Lumpur which had been purchased during their marriage for the sum of $50,000 of which the husband raised $40,000 whilst the wife raised the remaining $10,000. The property was registered in the name of the wife. Raja Azlan Shah J. held that the property was acquired by the joint resources of the parties and was therefore *harta sapencarian* and that the husband could claim a half share of the said property.

The learned judge in that case considered several authorities and held that the principle gleaned from those cases established that *harta sapencarian* is a matter of Malay *adat* and is applicable only to the case of a divorced spouse who claims against the other spouse during his or her lifetime and that this rule of law is local law of which the court must take judicial notice and it is the duty of the court to propound it. He further went on to say that once it is clearly established that the property was acquired subsequent to the marriage out of their joint resources or by their joint efforts a presumption arises that it is *harta sapencarian.* The presumption is rebuttable by evidence such as that the property was acquired by the sole

efforts or resources of the husband or by the evidence that it was a gift made to the wife. With regard to the division of *harta sapencarian* generally throughout the States of Malaya a divorced spouse is entitled to a share. The share of a Perak woman is fixed at one-third following the State Council Minute of 1907. In the other States the general trend is a half share depending on the particular circumstances.

There has been no decision as to the applicability of the principle of *harta sapencarian* in Singapore since July 1, 1968 when the Administration of Muslim Law Act came into force. By section 35(3) of the Administration of Muslim Law Act, the law governing the division of property on dissolution of marriage is Muslim law as varied where applicable by Malay custom. Prior to this date, the law was that the principle of *harta sapencarian* was not applicable. In *Bongah* v. *Mat Din*,[3] a Straits Settlements case, the plaintiff who was separated from her husband (but not divorced) sought to recover a sum of money for her share of the joint earnings. The court held that the joint earnings of a Muslim husband and wife — like other husbands and wives — were property of the husband under English law. Similarly in the case of *Tijah* v. *Mat Alli*,[4] the court held that in the former Straits Settlements (except parts of Malacca), a Muslim wife could not enforce a claim to a share of joint earnings. The Muslim Ordinance (Cap. 57 of the 1936 Revised Law Edition) and the Muslim Ordinance of 1957 made no changes to this law.

The cases of *Roberts alias Kamarulzaman* v. *Ummi Kalthom* and *Mohamed* v. *Commissioner of Lands and Mines, Trengganu & Anor.* though not binding authorities are highly persuasive. The question before the Board therefore is whether the principle of *harta sapencarian* is part of the Malay custom in Singapore. The Board takes judicial notice that the Malay custom in Singapore is *Adat Temenggong* and that it is much the same as that found in the States of Malaya particularly Johore. This similarity can be easily seen in the customs relating to betrothal and marriage. This is only natural in view of the close historical ties and close proximity between Singapore and Johore. The Board therefore is prepared to take judicial notice that the principle of *harta sapencarian* is part of Malay custom in Singapore.

The point to be noted is that for a property to become *harta sapencarian* it must be jointly acquired by the spouses or by their joint efforts. As it is the appellant who claims to have a share in the property the burden is on her to satisfy the court that the property was acquired partly through her joint effort. The law relating to the standard of proof required of the parties before the Shariah Court is provided for in section 42 of the Administration of Muslim Law Act. This section provides that the court shall have regard to the law of evidence for the time being in force in Singapore and shall be guided by the principles thereof but shall not be obliged to apply the same strictly. It is clear that as regards evidence, the law is not the Muslim law of evidence but the common law of evidence. The appellant has not been able to discharge the burden of proof. The court could have rightly dismissed her claim. However, the court relied on the Muslim law as set out earlier and following that proposition awarded her one-third of her claim. The Board is not prepared to reverse the finding of fact by the court and in the circumstances the Board finds that the house is not *harta sapencarian* and the principle of *harta sapencarian*, though applicable in Singapore, is not applicable in this instance. The Board feels that there is no justification to depart from the principle of Muslim law as propounded by the court earlier. The Board directs that the quantum of the appellant's interest be fixed at one-half of $11,000.

As regards the appeal by the respondent against the payment of $700 as consolatory gift, the Board is of the view that it was the appellant who deserted the matrimonial home and being the party in default she is not entitled to consolatory gift. In the circumstances, the appeal by the respondent in this regard is allowed.

The Appeal Board hereby directs that the respondent pay the appellant a sum of $5,500 by way of the appellant's share in the matrimonial property. The Board further directs that the respondent need not pay the appellant any sum of money by way of *muta'ah* (consolatory gift). Such payment as directed above is to be paid before the registration of the divorce of both parties.

*Order accordingly.*

Solicitors: *J.B. Jeyaretnam; R.E. Redrup.*